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ITAR/Export Administration Regulations, Revisions, AMSAT, and You

Anthony R. Gordon, KG6EQM

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-Unclassified-

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ITAR/Export Administration: Statutory Basis:

ITAR: 22. U.S.C. Code §2278-2994
Regulations: 22 C.F.R. § 120-30 (2007)

EAR: 50 U.S.C. §22 C.F.R. §2401 et seq.
Regulations: 15 C.F.R. §730-774

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ITAR: Deals with mainly military satellite components

EAR: Deals with commercial satellites, like AMSAT related work.

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History of U.S. Satellite Export Controls:

Historically Comsat exports switched between the Department of Commerce and the Department of State depending on economic and political factors.

Competing interests on National Security versus promotion of American Satellite Industry.

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History of U.S. Satellite Export Controls, (Cont):

Prior to 1999, Comsats were regulated by the Department of Commerce.

1995 and 1996 Hughes Space and Communications International/Space Stations/Loral exploded after launch using a March 2E rocket

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History of U.S. Satellite Export Controls:

Congressional Committee was formed lead by Representative Christopher Cox (R-CA) to investigate actions by Hughes and Loral

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History of U.S. Satellite Export Controls:

Cox Committee issued a report (Cox Report) which found while both companies had a proper export license from the Department of Commence for the actual launches, they did not have a proper export license for the subsequent investigation into the launches failures.

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History of U.S. Satellite Export Controls:

Because of the unauthorized transfer of technology, Congress in the FY99 Strom Thurmond National Defense Authorization Act, transferred export control responsibility for all commercial and non-commercial satellites from the Department of Commerce (RAR) to the more restrictive State Department's ITAR regulations found in the U.S. Munitions List (USML).

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History of U.S. Satellite Export Controls:

USML from 1996-1999 only slight changes and was limited to satellites with a military application.

After 1999, spacecraft broadly defined to include: communication satellites, remote sensing satellites, scientific satellites, research satellites, experimental and multi-mission satellites. Military application became no long a prerequisite to Department of State licensing.

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History of U.S. Satellite Export Controls:

Results were significant over time: In 1997 U.S. Companies controlled 65.1% of the world satellite manufacturing market. By 2007, U.S. share of world market was down to 41.4%.

Department of Defense reported loss of foreign sales to be $2.35 billions, even though less than 1% of ITAR applications were denied from 2003-2006.

Market Share moved to European satellite firms, French and Italian firms; European Space Agency.

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History of U.S. Satellite Export Controls, (Cont.)

No real incentive to amend the licensing regulations after September 11, 2011 due to National Security Concerns.

Prosecutions increased: United States v. Butler (2004)(Plague shipped to Tanzania, medical doctor received 24 months in prison and was fined $4,700 and ordered to pay $38,000 to Texas Tech); Suntek Microwave (2004)(Deemed transfer to Chinese foreign national. Company pled guilty of having had transferred technology to manufacture detector log video amplifiers, and was fined $339,000 and paid $275,000 to settle civil charges along with a 20 year export ban.

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History of U.S. Satellite Export Controls (Cont.)

Changes first occurred by President Obama's Export Control System Reform Initiative in August of 1999.

Interagency review of Department of State and Department of Commerce.

Department of State's Directorate of Defense Controls noted that a key objective of the Department of State's Political-Military Bureau was that it was designed to "better protect America's most sensitive defense technologies, which reducing the unnecessary restrictions on exports of less sensitive items.

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Interagency goal of the review of the entire U.S. Export Control System was of:

“strengthening national security and the competitiveness of key U.S. manufacturing and technologies sectors by focusing on current threats and adapting to the changing economic and technological landscape” in order to be consistent with the United States international commitments.

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In April of 2010, , President Obama's Reform initiative resulted in recommending a uniform approach focused on four singularities:

(1) a single export control licensing agency for dual-use, munitions exports, and Treasury-administered embargoes (based on previous imposed economic sanctions by the United States against foreign countries, such as Iran);

(2) a unified control list;

(3) a single primary enforcement coordination agency; and

(4) a single integrated information technology system.

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In April of 2010, President Obama's Reform initiative lead to Congressional Efforts of Reform:

2013 Department of Commerce and Department of State Risk Assessment with recommendations to Congress.

May 2012, Representative Adam Smith put forth an amendment to the FY2013 National Defense Authorization Act (Smith Amendment) to remove commercial satellites and related components from the USML, and to return to the President the power to transfer satellite export control from the Department of State USML to the Department of Commerce (EAR Commerce Control List).

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Smith Amendment only authorized the President to determine which export regime governs the export of commercial satellites, to be done through regulation. The FY2003 NDAA with the Smith Amendment passed the House of Representatives 315 to 107 and the Senate 81-14.

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What does this mean for AMSAT and You?

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Smith Amendment makes it easier for AMSAT-NA by easing restrictions on the commercial satellite industry by narrowing the definition of what is included on the USML:

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What is not included under the USML:

Comsats without classified components:

Some exceptions NASA JWST

Remote Sensing Satellites with certain performance parameters

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What is still included under the USML:

GPS receiving equipment specifically designed or configured for military use.

GPS receiving equipment designed for producing navigation results above $60,000 feet altitude and at 1,000 knots velocity of greater

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Possible Future Exemptions:

CubeSat exclusion:

January 2017 Changes:

Increase aperture threshold for remote sensing; eliminates controls on satellites that support human habitation; refines controls based on technical capabilities rather than end use; refines several controls based on technical capabilities rather than end use of spacecraft; removes and replaces confusing criteria concerning integrated propulsion and attitude controls; adds thresholds for controls on electronic propulsion systems and clarifies various ambiguities in the new regulations.

Department of State will continue to review export regime as technology warrants.

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Questions?

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In summary, there are still uncertainties in the ITAR regulations, but U.S. Department of State regulations are continuing being updated and amended.